

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AIR PRODS. AND CHEM., INC.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 03-CV-3087
	:	
KARANDEEP SINGH SANDHU, et al.,	:	
Defendants.	:	

**ORDER**

AND NOW, this       day of June, 2003, upon consideration of: (i) Defendants’ Motion to Dismiss, or in the alternative, Motion to Transfer (Document No. 8, filed May 23, 2003), and their brief in support (Document No. 9, filed May 23, 2003); (ii) Plaintiff’s Response to the Motion (Document No. 10, filed May 28, 2003); and (iii) Defendants’ Reply brief in support of the Motion (Document No. 12, filed May 30, 2003), it is hereby **ORDERED** as follows.

“When a defendant raises the defense of the court’s lack of personal jurisdiction, the burden falls upon the plaintiff to come forward with sufficient facts to establish that jurisdiction is proper.” Mellon Bank (East) PSFS, Nat. Ass’n v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992). “The plaintiff meets this burden and presents a prima facie case for the exercise of personal jurisdiction by ‘establishing with reasonable particularity sufficient contacts between the defendant and the forum state.’” Id. (citation omitted). “Although the plaintiff bears the burden of demonstrating the facts that establish personal jurisdiction, in reviewing a motion to dismiss under Rule 12(b)(2), we ‘must accept all of the plaintiff’s allegations as true and construe disputed facts in favor of the plaintiff.’” Pinker v. Roche Holdings Ltd., 292 F.3d 361, 368 (3d Cir. 2002)(citations omitted).

Pennsylvania’s long arm statute provides, in relevant parts, that courts in Pennsylvania

shall have a means for exercising personal jurisdiction over entities outside of Pennsylvania, if the entity outside of the jurisdiction is: (1) transacting any business in Pennsylvania; (2) contracting to supply services or things in Pennsylvania; (3) causing harm or tortious injury by an act or omission in Pennsylvania; or (4) causing harm or tortious injury in Pennsylvania by an act or omission outside Pennsylvania. See 42 PA. CONS. STAT. § 5322(a). However, as an overlay to the long-arm statute, courts are only directed to exercise specific jurisdiction when the defendant has “certain minimal contacts with [the forum] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95 (1945)(quoting Milliken v. Meyer, 311 U.S. 457, 463, 61 S. Ct. 339, 343, 85 L. Ed. 278 (1940)). See also IMO Indus. v. Kiekert AG, 155 F.3d 254, 259 (3d Cir. 1998). A three factor balancing test determines whether sufficient minimum contacts exist: (i) whether the defendant purposefully availed himself to the privilege of acting within the forum state; (ii) whether the cause of action arose from the defendant’s activities within the forum state; and (iii) whether the defendant’s acts have a substantial enough connection with the forum state to make jurisdiction over the defendant reasonable. Once the plaintiff has established sufficient minimum contacts between the defendants and the forum state, then the court will consider “whether the assertion of personal jurisdiction would comport with fair play and substantial justice.” Mellon Bank, 960 F.2d at 1222 (3d Cir. 1992). The burden is on the defendant to show a “compelling case that the presence of some other considerations would render jurisdiction unreasonable.” Id. at 1226 (quoting Carteret Sav. Bank v. Shushan, 954 F.2d 141, 150 (3d Cir. 1992)).

Defendants’ alleged misappropriation of trade secrets clearly falls within the scope of the

Pennsylvania long arm statute, and provides a means for this Court to exercise personal jurisdiction over the Defendants. Furthermore, the Defendants have sufficient minimum contacts with the forum state under the Fourteenth Amendment's due process clause. See Leonard A. Feinberg, Inc. v. Central Asia Capital Corp., Ltd., 936 F. Supp. 250, 256 (E.D. Pa. 1996)(“Pennsylvania's long arm statute provides that its reach is co-extensive with the limits placed on the states by the federal Constitution.”)(quoting Vetrotex Certainteed Corp. v. Consol. Fiber Glass Prods. Co., 75 F.3d 147, 150 (3d Cir. 1996)). Specifically, the claims of this cause of action arise directly out of many acts which Defendant Sandhu did while working in Allentown, Pennsylvania, such as: (i) allegedly breaching a confidentiality agreement signed in Pennsylvania; (ii) allegedly gathering confidential documents and information, while employed in Pennsylvania, about the manufacturing process of Surfynol® 104; and (iii) allegedly gathering Plaintiff's customer information while employed in Pennsylvania. Upon balancing the relevant factors, this Court concludes that Defendant Sandhu has Constitutionally sufficient minimum contacts with the forum state, subjecting him to personal jurisdiction in Pennsylvania. Furthermore, the Defendants have tendered no evidence suggesting that this Court's exercise of personal jurisdiction will fail to comport with the notions of fair play and substantial justice. Lastly, Defendant Inter-Chemical USA merely acts as Defendant Sandhu's alter ego, and is therefore subject to personal jurisdiction in Pennsylvania based upon the same theories as Defendant Sandhu. See Star Creations Inv. Co. Ltd. v. Alan Amron Dev. Inc., 1995 WL 495126, at \*11 (E.D. Pa. Aug. 18, 1995)(“a foreign corporation that would not on account of its own activities be subject to personal jurisdiction in the forum state may nonetheless be subjected to jurisdiction in the forum on the basis of activities of an alter ego”).

Based upon the foregoing reasons, Defendants' Motion to Dismiss for lack of personal jurisdiction is **DENIED**. It is further **ORDERED** that Defendants' alternative motion to transfer, pursuant to 28 U.S.C. § 1406(a), is **DENIED**. A substantial part of the events giving rise to the Plaintiff's cause of action occurred within the Eastern District of Pennsylvania, pursuant to 28 U.S.C. 1391(a)(2), and the Defendants' have not established forum non-convenience under 28 U.S.C. § 1404(a) and the Jumara factors.<sup>1</sup> The *only* single factor favoring transfer to California is that Defendant Sandhu currently resides in California; this is an insufficient justification for transfer.

BY THE COURT:

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Legrome D. Davis, U.S.D.J.

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<sup>1</sup> In Jumara, the Third Circuit held that in balancing the conveniences to be considered in entertaining a motion to transfer, the courts should consider, in part, the following: (i) the plaintiff's choice of forum; (ii) the forum where the claim arose; (iii) the conveniences of the parties in light of their physical and financial condition; (iv) convenience to the witnesses; (v) location of books and records; and (vi) the familiarity of the trial judge with the applicable state law in diversity cases. See generally Jumara v. State Farm Ins. Co., 55 F.3d 873 (3d Cir. 1995).